

**Staff
Summary
Report**



**To: Mayor & City Council
Through: City Manager**

**Agenda Item Number 19
Meeting Date 9/05/02**

SUBJECT: Rolling Hills Contract Extension

PREPARED BY: Mark Richwine, Parks and Recreation Director, (480) 350-5325

REVIEWED BY: Tom Canasi, Community Services Manager, (480) 350-5305

LEGAL REVIEW BY: Ron Dunham, Assistant City Attorney, (480) 350-8814

BRIEF: Request to award a 5-year extension to the existing contract to operate Rolling Hills Golf Course Restaurant under the terms and conditions provided for the contract.

COMMENTS: ROLLING HILLS (0703-03) The Rolling Hills Golf Course Restaurant agreement with operator Pete Kotsakis expired August 1, 2002. Mr. Kotsakis has indicated that he wishes to continue with the same rental terms, adding a 4% rent increase per year throughout the 5-year extension.

Document Name: (20020905csmr02) Supporting Documents: Yes

SUMMARY: This action is to award a contract extension of 5 years to to Pete Kotsakis to operate the Rolling Hills Golf Course Restaurant as provided for in the existing contract. The contract will expire August 1, 2007.

FISCAL NOTE: The rent will increase by 4% per year throughout the 5-year extension, providing payments of approximately \$36,000 annually to the golf enterprise.

RECOMMENDATION: Staff recommends the approval of the 5-year contract extension.



Pete's 19th Tee

Rolling Hills Golf Course

1405 N. Mill Ave.

Tempe, AZ 85281

Business: 966-6726

Residence: 838-5365

SENT VIA HAND DELIVERY AND FIRST CLASS U.S. MAIL

January 26, 2002

Mr. Ron Dunham, Esquire
Tempe City Attorney's Office
140 East Fifth Street
Suite 301
Tempe, Arizona 85281

City of Tempe
Post Office Box 5002
Tempe, Arizona 85281

Re: Pete's 19th Tee Restaurant at Rolling Hills Golf Course
Exercise of Contract Extension Option

Dear Ron:

This shall confirm our conversation on January 23, 2002 regarding the exercise of our contract extension option. As we discussed, Linda and I wish to exercise the five-year extension option pursuant to Paragraph Number 3 of the Restaurant Concession Agreement, Tempe Rolling Hills Golf Course, dated March 19, 1987, and subject to our mutual agreement upon the maintenance and equipment ownership provisions of the agreement.

As we further discussed, Linda and I look forward to a meeting next month to clarify the rights, duties and obligations of both us and the City of Tempe regarding the subject property pursuant to the maintenance and equipment ownership provisions of the agreement.

Please call Linda or me to arrange a mutually convenient time for this meeting. We look forward to seeing you at that time.

Sincerely,

Peter Kotsakis
Owner, Pete's 19th Tee Restaurant

cc: **Sent Via First Class U.S. Mail**
Mr. Mark Richwine
City of Tempe Parks and Recreation Department
3500 South Rural Road
Tempe, Arizona 85280

Sent Via First Class U.S. Mail
Mr. Mike Armfield
City of Tempe Parks and Recreation Department
3500 South Rural Road
Tempe, Arizona 85280

C87-36

RESTAURANT CONCESSION AGREEMENT

TEMPE ROLLING HILLS GOLF COURSE

THIS CONCESSION AGREEMENT made and entered into this 19th day of March 1987, by and between the City of Tempe, hereinafter called City and Peter and Linda Kotsakis, husband and wife, hereinafter called Concessionaire.

WITNESSETH:

WHEREAS, it is the desire of the parties hereto to establish a concession for the operation of a restaurant at the Tempe Rolling Hills Golf Course.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, it is mutually promised as follows:

1. CONCESSION

City grants to Concessionaire the exclusive right to sell food and refreshments within the restaurant and on the grounds of the Tempe Rolling Hills Golf Course. For the purposes of this concession, the terms "food and refreshments" shall include prepared meals, sandwiches, soft drinks, alcoholic beverages, candy, tobacco, coffee and other miscellaneous items appropriate to such concession operation.

2. TERM

It is the intent of the parties that the term of this Concession Agreement shall be for a period of ten (10) years commencing on April 1, 1987 and ending on April 1, 1997;

provided, however, it is expressly understood and agreed that City shall retain the right to disaffirm this Agreement on or after July 1, 1988, or on or after July 1, 1990, or on or after July 1, 1992, or on or after July 1, 1994, or on or after July 1, 1996, or on or after July 1, 1998, subject to the provisions of paragraph 23 herein. Should the Concessionaire hold over beyond the term herein provided with the consent, expressed or implied, of the City, such holding shall be from month to month only, subject to the terms of this Concession Agreement, but shall not be a renewal hereof.

3. EXTENTION

Concessionaire may with the consent of City extend this Agreement for two additional five (5) year periods, by written notice to City six (6) months prior to the expiration date hereof, upon terms and conditions to be negotiated in good faith between the parties hereto, provided however, that upon such written notice Concessionaire is not in default and has performed in a manner satisfactory to City; and further provided however, that it is expressly understood and agreed that City shall retain the right to disaffirm any such extension to this Agreement on or after July 1, 1988, or on or after July 1, 1990, or on or after July 1, 1992, or on or after July 1, 1994, or on or after July 1, 1996, or on or after July 1, 1998, or on or after July 1, 2000, or on or after July 1, 2002, or on or after July 1, 2004, or on or after July 1, 2006, or on or after July 1, 2008, subject to the provisions of paragraph 23 herein.

4. RENTAL

Concessionaire shall pay to City as rental a sum of \$1,700.00 per month for the first year with 4% increase per contract year thereafter, which shall be payable on or before the 10th day of each month during the term of this lease commencing on the 10th day of the month this lease commences.

5. FACILITIES, MAINTENANCE AND SERVICES TO BE PROVIDED
BY CITY

a. City shall provide that portion of the clubhouse building designated for food preparation and service.

b. City shall provide outside maintenance of the clubhouse building.

c. City shall provide maintenance of mechanical heating and cooling equipment.

d. City shall provide, maintain and replace as required, the equipment as more particularly set forth on Exhibit A attached hereto, including, but not limited to, all floor covering initially installed by City; provided however, Concessionaire agrees to exercise due custodial responsibility including alerting the Recreation Administrator and obtaining prior approval before undertaking any maintenance or repair and further provided that Concessionaire shall replace at his expense glassware, silverware and other accessory supplies.

6. FACILITIES, MAINTENANCE AND SERVICES TO BE PROVIDED
BY CONCESSIONAIRE

a. Maintain for sale an adequate and reasonable stock of food, beverages, confections, tobacco and other sundry items. Beverages may include alcoholic beverages, provided however, Concessionaire agrees to obtain a Series No. 16 On-Sale Retailer's License as approved by the Arizona Department of Liquor License and Control. In that connection, Concessionaire acknowledges that he has read and is conversant with the laws of the State of Arizona as more particularly set forth in Title 4, Arizona Revised Statutes, and also the regulations promulgated by the State Department of Liquor License and Control, and agrees to abide by said laws and regulations.

b. Furnish and install at his own expense in the demised premises those items of furniture, furnishings and equipment required (not already provided by City) as listed in Exhibit B, for the operation of the subject facility in a manner calculated to render sufficient and adequate service to the general public. Concessionaire agrees that furniture, furnishings and equipment provided by Concessionaire will be maintained at his own expense. Items listed in Exhibit B to be furnished by Concessionaire are listed to show level and standard of quality and are not intended to be restrictive. Concessionaire may furnish other equal equipment, with approval by City.

c. Provide at his own expense an adequate staff.

d. Be solely responsible for the complete interior maintenance, including painting, of the demised premises.

e. Provide for regular collection of refuse and provide

proper waste receptacles for use in the concession area.

f. Be solely responsible for complete janitorial services and the furnishing of janitor supplies, including lamps and tubes.

g. Arrange for any and all telephone service to the demised premises for the concession operation, none of which shall be borne by the City.

h. Operate all concessions in a businesslike fashion and to the satisfaction of City, including coordination of all golfing activities with the Golf Course Operator.

7. SANITARY CONDITIONS

Concessionaire agrees to maintain the demised premises in a safe, wholesome and sanitary condition, to the satisfaction of City and the Maricopa County Board of Health, and in compliance with all applicable laws. Concessionaire further agrees to provide proper containers for refuse and to keep said demised premises clear of litter.

8. PRICES

Sales and prices charged by Concessionaire shall be limited to such food and beverage items as may be approved by the City, provided however, the items of food and beverages and prices allowed shall be reasonable.

9. UTILITIES

Concessionaire agrees to provide and pay the cost of all gas, electricity, cable T.V. and telephone service used by him in all

operations permitted under this Agreement. City agrees to provide all water.

10. EASEMENTS

City reserves the right to establish, grant or utilize easements or rights-of-way over, under, along and across Concessionaire's premises for utilities or access as it may deem advisable for the public good; provided however, that City shall exercise said rights in a manner as will not unreasonably interfere with Concessionaire's use of said premises.

11. ALTERATIONS AND REPAIRS

Concessionaire shall have the right to make alterations to the demised premises provided, however, that such alterations shall be made only following receipt of written approval from City, which approval shall not be unreasonably withheld. Concessionaire shall have the full and complete responsibility for all repairs to said improvements, except the exterior maintenance of the basic structure and roof and the floor covering initially installed by City which shall be the responsibility of City. Upon Concessionaire's failure to properly repair said facilities, Concessionaire agrees to allow City to enter and make repairs in order to satisfactorily insure service to the public. Such right shall not be construed as constituting a duty upon City to make such repairs. Where such repairs are made by City, cost of such repairs shall be paid by Concessionaire to City on the rental day succeeding the completion thereof.

12. RIGHT OF ENTRY

Concessionaire's demised premises shall at all times be open to the inspection of authorized representatives of City and other proper governmental authorities.

13. DAYS AND HOURS OF OPERATION

Concessionaire agrees to keep said concession open and in operation every day including Sunday and holidays during the term of this Agreement. The minimum hours of operation shall be the same as those maintained by the golf course.

14. MISCELLANEOUS OPERATIONAL RIGHTS AND OBLIGATIONS

a. Concessionaire shall have the right to arrange organizational parties at night (to the exclusion of the general public) and shall have the right to otherwise provide for regular night service to the public.

b. Concessionaire shall maintain an adequate and proper staff, and not maintain in his employ any person whose conduct or activities are deemed to be detrimental to the interests of the public patronizing Rolling Hills Golf Course. Concessionaire further agrees to discharge such person or persons within a reasonable time after notice by the City.

c. Concessionaire agrees that no signs or advertising matter of any kind will be displayed on or near the outside or inside of Concessionaire's demised premises, unless first approved in writing by City.

15. INDEMNITY AND HOLD HARMLESS

Concessionaire shall indemnify and hold harmless City and any of its agents, servants or employees from any claim or cause of action of any kind, character or nature which may arise out of the use of the premises in connection with the operation of the concession.

16. INSURANCE

Concessionaire shall provide a Certificate of Evidence of Personal, Property, General Liability, Products Liability, and Liquor Liability Insurance coverage in the minimum amount of \$1,000,000, combined single limit. Concessionaire shall provide City with evidence of insurance which shall contain an endorsement naming the City as additional insured and that such endorsement shall be primary to City coverage.

The Certificate of Evidence of Insurance must contain the statement that the City Clerk shall be given at least thirty (30) days prior notice in the event of cancellation or substantial alteration of coverage.

The endorsement as outlined above shall be received prior to commencement of Concessionaire's activities.

17. CANCELLATION

The following events are hereinafter called "Events of Default."

a. The failure of Concessionaire to punctually pay the rentals or make any other payments required hereunder within ten (10) days after written notice from City.

b. The failure of Concessionaire to maintain the quality and number of services as required in this Agreement where such failure continues for more than ten (10) days after written notice from City to correct the condition therein specified.

c. The filing of a voluntary petition in bankruptcy by City, the adjudication of Concessionaire as a bankrupt, the appointment of any receiver of Concessionaire's assets, the making of a general assignment for the benefit of creditors, the levy of any attachment or execution which substantially interferes with Concessionaire's operations under this Agreement and which attachment or execution is not set aside within a period of sixty (60) days.

d. The abandonment, vacation or discontinuance of Concessionaire's operations on the demised premises for more than forty-eight (48) hours.

e. Assignment, sale, transfer, exchange, divestment, hypothecation or mortgage without the prior approval of City.

f. Failure to maintain insurance as specified in Paragraph 16 of this agreement.

Upon the occurrence of any one or more of the "Events of Default", City shall have the right to terminate this concession.

18. DAMAGE AND DESTRUCTION OF PREMISES

If the demised premises shall be so damaged through no fault of Concessionaire by fire, elements, casualty, war, public disorder or any occurrence as to be substantially destroyed, then this Agreement, at the option of City, shall cease and come to an end. If City elects to restore the premises to the former configuration, this Agreement

shall continue in full force and effect; provided, however, that the rent to be paid by Concessionaire shall be abated and/or rebated during the time of reconstruction and shall be reinstated commencing upon the date the premises become tenantable. If City elects to rebuild the premises to incorporate substantial modifications in area, seating capacity, equipment, etc., the parties hereto shall have the right to renegotiate the terms of this Agreement.

Notwithstanding the provisions of this Paragraph, City shall not be liable for any business losses suffered by Concessionaire during any such period of damage or destruction of the demised premises.

19. ASSIGNMENTS

Concessionaire shall not assign any or all of his rights hereunder without the prior approval of the City Council, except that Concessionaire may assign this lease to a corporation wholly owned by Concessionaire, such assignment shall not release Concessionaire from personal liability for the performance of Concessionaire's obligation under the terms of this Agreement.

20. SURRENDER

Upon the expiration of the term hereof, or sooner termination of the Agreement as provided for, Concessionaire shall peaceably vacate the demised premises and deliver up the same to City in a reasonably good condition, ordinary wear and tear excepted.

21. COMPLIANCE WITH THE LAWS

Concessionaire shall observe and comply with all laws, statutes, ordinances, rules and regulations of the United States Government, the State of Arizona, Maricopa County, the City of Tempe or any department or agency of the above.

22. NOTICES

All notices or approvals contemplated or required by this Agreement shall be given by transmitting, postage prepaid, to the respective parties at the following addresses:

CITY:
City of Tempe
P.O. Box 5002
Tempe, AZ 85281

CONCESSIONAIRE:
Pete and Linda Kotsakis
7112 S. LaRosa Dr.
Tempe, AZ 85283

23. DAMAGES

Should City disaffirm this Agreement as set forth in Paragraph 2 hereof, prior to the end of the initial ten year term, City shall be liable for and shall pay to Concessionaire amortization damages as set forth hereinbelow:

a. Amortization damages shall be determined by dividing the actual cost incurred by Concessionaire in establishing the restaurant area by one hundred twenty months and multiplying the result thereof by the number of months remaining in the term of this Agreement.

b. Within thirty (30) days of completion of the aforesaid establishment of the restaurant, Concessionaire shall provide to City the actual costs of equipment, furniture and furnishings, installed

and approved as per Paragraph 6 of this agreement, together with such additional documentation as City deems necessary to verify such figures.

c. The provisions of this paragraph shall not apply to a cancellation of this Agreement initiated by City pursuant to Paragraph 17 hereof.

IN WITNESS WHEREOF, the parties have set their hands on the date first written above.

CITY OF TEMPE

By Harry E. Mitchell
Mayor

ATTEST:

Virginia Thompson
City Clerk

The undersigned does hereby confirm that this Agreement has been approved by the City Council, and further approved as to form:

James M. O'Neill
City Attorney

CONCESSIONAIRE:

Peter Kotzaris

OWNER
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ATTEST:

Virginia Lho
City Clerk

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City Attorney

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"RESTAURANT CONCESSIONS"

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TERMS AND CONDITIONS

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C87-36A

ADDENDUM TO CONTRACT C 87-36

"RESTAURANT CONCESSION AGREEMENT TEMPE ROLLING HILLS GOLF COURSE"

On the 19th day of March, 1987, a Concession Agreement concerning the restaurant facility at Tempe Rolling Hills Golf Course was entered into between the City of Tempe, hereinafter called "TEMPE" and Peter and Linda Kotsakis, husband and wife, hereinafter called "CONCESSIONAIRE". The parties to that Agreement come now on the 2nd day of November, 1987 and add to and/or amend their Agreement of March 19, 1987 for the reasons and upon the terms set forth below.

The parties hereto stipulate and mutually agree that it is desirable to provide a liquor service upon the Rolling Hills Golf Course proper and that the concessionaires are not currently able to obtain a license from the Arizona Department of Liquor Licenses and Control which would permit them to serve alcoholic beverages outside of the restaurant facility, but that the City of Tempe may obtain a Government License covering the entire Rolling Hills Golf Course, including restaurant, golf course, parking lot and driving range, by which the Concessionaires may serve alcoholic beverages to the public pursuant to the terms and conditions of this Addendum/Amendment to the parties Concession Agreement.

TERMS AND CONDITIONS

1. The Concessionaires, Peter and Linda Kotsakis, are hereby authorized to serve alcoholic beverages pursuant to and within

the designated boundaries of the City of Tempe Government Liquor License on the Tempe Rolling Hills Golf Course facility upon surrender of the current No. 12 Restaurant License at that location held by the Concessionaires but only during the time that this Addendum and the parties original Concession Agreement are in effect and only during those periods of time that the required insurance coverage mentioned below is actually in effect.

2. Peter and Linda Kotsakis are not permitted to sell or assign any of the authority granted by this Concession Agreement unless previously approved in writing by the Tempe City Attorney.

3. The Kotsakis' represent and agree that they will be responsible for and will pay any initial or annual fees associated with Tempe's Government Liquor License during those times that they are the actual concessionaires of said liquor license. And further that they will be personally responsible both jointly and separately for all fines, penalties, fees, etc. which are necessary to maintain or which are imposed upon the City of Tempe or its individual applicant by the State of Arizona in relation to this Government Liquor License at Tempe Rolling Hills Golf Course.

4. The Kotsakis' agree to obtain and keep in place One Million Dollars (\$1,000,000.00) in liability insurance coverage, including specifically liquor liability identifying the City of Tempe as an additional insured. The Certificate of Evidence of Insurance must contain the statement that the City Clerk shall be

given at least thirty (30) days prior notice in the event of cancellation or substantial alteration of coverage. The Concessionaires specifically agree and acknowledge that they are not authorized and may not sell or serve any alcoholic beverages at any time the above-mentioned insurance coverage is not in full force and effect identifying the City of Tempe as an additional insured. Any violation of this provision may be used by Tempe as a basis to immediately terminate this Concession Agreement.

5. Concessionaires right to sell and serve pursuant to the City of Tempe's Government Liquor License at Rolling Hills Golf Course is exclusive with the exception of up to four (4) days by the City of Tempe per year.

6. The Concessionaires' agree that they shall observe and comply with all laws, statutes, ordinances, rules and regulations of the United States Government, the State of Arizona, the County of Maricopa and the City of Tempe, or any department or agency thereof and that their failure to so comply may be deemed a breach of this Agreement permitting its termination. In particular, Peter and Linda Kotsakis agree to act in strict compliance with the Liquor Laws and regulations of the State of Arizona. Any violation of said laws and regulations entitles Tempe at its discretion to immediately terminate this Concession Agreement.

7. The Concessionaires hereto acknowledge and agree that the City of Tempe is not required to continue to carry this Government Liquor License at Rolling Hills Golf Course, however,

the City of Tempe will agree to provide the Concessionaires with a "Statement of Intent" to either renew or not renew the Government Liquor License but not more than one hundred and five (105) days prior to the expiration of the annual license upon request in writing received from the Concessionaires by the City's applicant, David R. Merkel, Tempe City Attorney.

8. Concessionaires both jointly and individually agree to indemnify and hold harmless the City of Tempe and any of its agents, servants or employees from any claim of any kind, character or nature which may arise out of the use of the premises in connection with the operation of the concession or this addendum.

Harry E. Mitchell Dated Nov. 3, 1987
Mayor

Peter Kotsakis Dated 10-21-87
Peter Kotsakis

Linda Kotsakis Dated 10-21-87
Linda Kotsakis

ATTEST:

Virginia Thompson
City Clerk

APPROVED AS TO FORM

W. Ken Horep
City Attorney